

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009100804

ORDER GRANTING MOTION TO
DISMISS IN PART

On October 14, 2009, Student's parents on behalf of Student (Student) filed a request for due process hearing, naming Placentia-Yorba Linda Unified School District as the respondent. On January 21, 2011, Student filed an amended due process hearing request (amended complaint).

On February 4, 2011, the District filed a Motion to Dismiss in Part seeking to dismiss Student's allegations which are outside the jurisdiction of the Office of Administrative Hearings (OAH) or beyond the statute of limitations. OAH has received no response to the motion from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 of the United States Code.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

Student's amended complaint alleges that certain conduct of the District violated the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Section 1983 of Title 42 of the United States Code. In the amended complaint, Student acknowledges that OAH does not have jurisdiction over Section 504 and Section 1983 claims but files those claims in order to exhaust administrative remedies. Student's complaint "stipulates" to OAH's limited jurisdiction "without need for formal motion." However, the District chose to bring such a motion, so it is appropriate to dismiss the Section 504 and Section 1983 claims at this time.

The District also argues that Student's complaint contains allegations involving events which occurred prior to October 14, 2007, and therefore outside the two-year statute of limitations period. It is not clear whether Student's complaint contains such allegations. The issues listed at the end of the complaint state that they involve the time period: "Oct 2007 thru present January 21, 2011." It appears that any allegations involving events which occurred prior to October 14, 2007, are simply included as background. However, to the extent that any of those allegations involving events which occurred prior to October 14, 2007, are intended as issues for the due process hearing, it is appropriate to dismiss such issues because they are outside the statute of limitations period.

ORDER

1. The District's Motion to Dismiss in Part is granted.
2. Student's issues regarding violation of Section 1983 of Title 42 of the United States Code and Section 504 of the Rehabilitation Act are dismissed from Student's amended complaint.
3. To the extent that Student's amended complaint alleges any issues beyond the two year statute of limitations period (prior to October 14, 2007), those issues are hereby dismissed.

4. The matter will proceed as scheduled as to all remaining issues in the amended complaint.

Dated: February 8, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings